

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re: Appeal to the Board of Patent Appeals and Interferences

In re Application of: Zhou et al.

Group Art Unit: 1771

Serial No: 10/733,169

Examiner: Elizabeth M. Cole

Filed: December 11, 2003

Our Customer ID: 22827

For: Disposable Scrubbing Product

Our Account No: 04-1403

Sir:

Attorney Ref: KCX-652 (18776)

1. ☐ **NOTICE OF APPEAL:** Pursuant to 37 CFR 41.31, Applicant hereby appeals to the Board of Appeals from the decision dated ____ of the Examiner twice/finally rejecting claims ____.
 2. ☒ **BRIEF** on appeal in this application pursuant to 37 CFR 41.37 is transmitted herewith (1 copy)
 3. ☐ An **ORAL HEARING** is respectfully requested under 37 CFR 41.47 (due within two months after Examiner's Answer).
 4. ☐ Reply Brief under 37 CFR 41.41(b) is transmitted herewith (1 copy).
 5. ☐ "Small entity" verified statement filed: ☐ herewith ☐ previously.
 6. **FEE CALCULATION:**
- | | |
|--|----------------|
| | Fees |
| If box 1 above is X'd enter \$500.00 | \$ _____ |
| If box 2 above is X'd enter \$500.00 | \$500.00 _____ |
| If box 3 above is X'd enter \$1,000.00 | \$ _____ |
| If box 4 above is X'd enter -0- (no fee) | \$ _____ |

Petition is hereby made to extend the original due date of June 23, 2007 to cover the date of this paper and any enclosure for which the requisite fee is (1 month \$120); (2 months \$450); (3 months \$1,020); (4 months \$1,590), (5 months \$2,160)

Less any previous extension fee paid since above original due date.

	\$450.00 _____
Subtotal	\$950.00 _____
	- \$ _____
Subtotal	\$950.00 _____
	- \$ _____
TOTAL FEE	\$950.00 _____

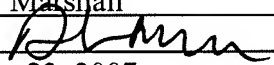
- If "small entity" box 5 above is X'd, enter one-half (1/2 of subtotal and subtract)
- ☐ Fee enclosed.
- ☐ Charge fee to our Deposit Account/Order Nos. in the heading hereof (for which purpose one additional copy of this sheet is attached)
- ☒ Charge to credit card
- ☐ Fee NOT required since paid in prior appeal in which the Board of Appeals did not render a decision on the merits.

The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any fees in addition to the fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (deficiency only) now or hereafter relative to this application and the resulting official document under Rule 20, or credit any overpayment, to our Account No. show in the heading hereof. This statement does not authorize charge of the issue fee in this case.

ADDRESS:

Post Office Box 1449
Greenville, SC 29602 USA
Customer ID No.: 22827
Telephone: 864-271-1592
Facsimile: 864-233-7342

DORITY & MANNING, ATTORNEYS AT LAW, P.A.

By: Alan R. Marshall Reg. No: 56,405
Signature: 
Date: August 23, 2007

I hereby certify that this correspondence is being transmitted via the internet to: Commissioner for Patents, U.S. Patent and Trademark Office, via the Electronic Filing System, on August 23, 2007.

Sandra S. Perkins

(Typed or printed name of person transmitting paper or fee)



(Signature of person transmitting paper or fee)

PATENT
ATTORNEY DOCKET NO: KCX-652 (18776)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application: Zhou et al.)	Examiner: Elizabeth M. Cole
)	
Serial No: 10/733,169)	Art Unit: 1771
)	
Filed: December 11, 2003)	Confirmation No: 5949
)	
Title: Disposable Scrubbing Product)	Deposit Account No: 04-1403
)	
)	Customer No: 22827

Mailstop Appeal Brief - Patents
Honorable Commissioner for Patents
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

Honorable Commissioner:

Appellants submit the following brief on appeal in accordance with 37 C.F.R. §
41.37:

1. REAL PARTY IN INTEREST

The real party in interest in this matter is the assignee of record, Kimberly-Clark
Worldwide, Inc.

2. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to the Appellants or the
Appellants' legal representative which will directly affect or be directly affected by or
have a bearing on the Board's decision in the pending appeal.

3. STATUS OF CLAIMS

Currently, claims 1-91 remain pending in the present application. Claims 1-8, 12, 17-18, 21-31, 35, 36, 41-53, 56-60, and 62-63, including independent claims 1, 29, and 47 were examined, and claims 9-11, 13-16, 19-20, 32-34, 37-40, 54-55, 61, and 64-91 are withdrawn pursuant to the species election filed on Oct. 5, 2005.¹ All the pending claims are attached hereto in the Claims Appendix.

In the Final Office Action of December 18, 2006 and in the Advisory Action of April 4, 2007, claims 1-8, 12, 17-18, 21-31, 35, 36, 41-53, 56-60, and 62-63 were finally rejected under 35 U.S.C. §103(a).

The rejection of examined claims 1-8, 12, 17-18, 21-31, 41-53, 56-60, and 62-63 is hereby appealed.²

4. STATUS OF AMENDMENTS

To the Appellant's knowledge, all amendments have been entered into the record.

5. SUMMARY OF CLAIMED SUBJECT MATTER

In general, the present application is directed to, a disposable scrubbing product for use in household cleaning or personal care applications as well as industrial cleaning and other applications. Pg. 1, lines 29-31. According to the present application, the disposable scrubbing product is a multi-layered product and generally

¹ Appellants note that claims 35 and 36 were omitted from the listing of pending claims in the Final Office Action, along with the status of the withdrawn claims 9-11, 13-16, 19-20, 32-34, 37-40, 54-55, 61, and 64-91. Appellants point to the Office Action Summary of May 18, 2006, for the correct listing of the status of the pending claims.

² The pending claims were also provisionally rejected under the non-statutory double patenting in view of five different pending applications. Appellants agree to file perfected Terminal Disclaimers to obviate these provisional rejections, should it become necessary following this appeal.

includes at least two distinct layers, an abrasive layer and an absorbent fibrous layer.

Pg. 2, lines 1-3. In some embodiments, the scrubbing product is constructed containing a plurality of abrasive structures configured in a stacked arrangement. Pg. 2, lines 17-19. This embodiment may further include an attachment structure for releasably attaching the plurality of abrasive structures together with sufficient strength to permit use of the scrubbing product without the plurality of abrasive structures delaminating. Pg. 2, lines 26-30.

For example, independent claim 1 is directed to a scrubbing product comprising a plurality of abrasive structures comprising an alternating abrasive layer and absorbent layer with the abrasive structures being attached to the top surface of a liquid absorbent substrate. See, e.g., Fig. 13 and Pg. 45, lines 26-32. Additionally, the scrubbing product comprises an attachment structure for releasably attaching the plurality of abrasive structures together, and allows for the top abrasive structure to be removed from the scrubbing product by a user pulling on the top abrasive structure. See, e.g., Fig. 13 and Pg. 46, lines 18-20.

Claim 4 is dependent upon claim 1 and provides for a plurality of stitches holding the abrasive structures together by a thread. See, e.g., Fig. 13 and Pg. 47, lines 5-6. Dependent claim 5 further requires that the thread be made from an elastic material. See, e.g., Fig. 13 and Pg. 47, lines 6-7.

Independent claim 29 is directed to a multi-layered scrubbing product comprising multiple abrasive structures that are wrapped around the substrate. See, e.g., Fig. 23 and Pg. 52, lines 23-26. The scrubbing layers include an abrasive layer adhered to an

absorbent web. See, e.g., Fig. 22, Pg. 52, lines 6-7. Additionally, the scrubbing layers are designed so that the outermost abrasive structure can be removed. See, e.g., Fig. 23 and Pg. 52, lines 20-22.

Claim 30 is dependent upon independent claim 29 and states that the scrubbing product has a rectangular shape.

Claim 31 is dependent upon independent claim 29 and provides that the scrubbing product has a cylindrical shape.

Finally, independent claim 47 is directed to a scrubbing product comprising an abrasive layer and an absorbent layer configured in a stacked arrangement. See, e.g., Fig. 14 and Pg. 45, lines 26-28. To remove the top abrasive structure from the scrubbing product, an attachment structure is provided for releasably attaching the plurality of abrasive structures together. See, e.g., Fig. 14 and Pg. 46, lines 18-20. Additionally, the attachment structure comprises a plurality of stitches that holds the plurality of abrasive structures together by a thread. See, e.g., Fig. 14 and Pg. 46, lines 22-23.

Claim 49 is dependent upon claim 47 and provides that the thread is made from an elastic material. See, e.g., Fig. 14 and Pg. 47, lines 6-7.

6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- I. In the Final Office Action, claims 1-4, 7, 12, 18, 21-22, 26, 29, 35-36, 43-44, 47, 48, 50-51, 53, 56-57, and 62, including independent claims 1, 29, and 47, were rejected under 35 U.S.C. § 103(a) in view of EP 1,212,974 (hereinafter "EP '974") in combination with WO 93/02610 (hereinafter "WO '610").

- II. Dependent claims 5, 30, 31, and 49 were rejected under 35 U.S.C. § 103(a) in view of EP '974 in combination with WO '610 and in further combination with U.S. Publication No. 2003/0028985 of Prodoehl, et al.

7. ARGUMENT

Appellants respectfully submit that the presently pending claims are patentable over the cited references. As discussed above, all of the pending claims were rejected under 35 U.S.C. § 103 (a) at least in view of EP '974 in combination with WO '610.

I. Independent claims 1, 29, and 47, along with their respective dependent claims, are patentable over EP '974 and WO '610.

The invention of EP '974 relates to a dishwashing wipe comprising a cleaning substrate and an abrasive substrate. Pg. 3, Para. 0010. The cleaning substrate is composed of nonwoven fibres or paper, and is either partially or fully permeable to water. Pg. 3, Para. 0011. The abrasive substrate is composed of a web of abrasive fibres that are useful in scrubbing residue from dishware. Pg. 5, Para. 0023.

WO '610 is directed to a disposable wash cloth comprising three layers. Abstract. The first layer is absorbent, exposed for immediate use, and is separated from the second layer by a plastic sheet. Pg. 2, lines 1-3. The first layer can be torn off with the plastic sheet to expose the second layer, which is also absorbent and can be moistened with a disinfectant liquid. Pg. 2, lines 3-5. A plastic sheet separates the second layer from the third layer and is torn off with the second layer exposing the third layer. Pg. 2, lines 4-6. The third layer may contain a scented substance. Abstract.

As admitted by the Office Action, EP '974 does not teach a plurality of abrasive structures comprising alternating scrubbing and absorbent layers in any embodiment.

Additionally, EP '974 does not teach the abrasive structures to be releasably attached allowing for the top abrasive structure to be removed from the scrubbing product. The Office Action combines the teachings of WO '610 stating it would have been obvious to employ "a plurality of plies of the structures comprising the abrasive elements and the absorbent elements." Office Action of December 18, 2006, Pg. 3, lines 6-7.

A. Even if combined, EP '974 and WO '610 do not teach all of the limitations of independent claim 1.

Appellants respectfully submit that all limitations of independent claim 1 are not taught by the cited references, even if combined as attempted by the Office Action. In EP '974 four different embodiments of the dishwashing wipe are taught. The first embodiment comprises one cleaning substrate and one scrubbing substrate arranged back to back. Pg. 6, Para. 0025. The second embodiment comprises two or more cleaning substrates layered back to back and then reversibly attached to one scrubbing substrate. Pg. 6, Para. 0025. The third embodiment comprises one cleaning substrate reversibly attached to two or more scrubbing substrates, which are arranged side by side so that each is in contact with the cleaning substrate. Pg. 6, Para. 0025. Finally, the fourth embodiment comprises one cleaning substrate reversibly attached to two or more scrubbing substrates that are layered on top of one another. Pg. 6, Para. 0025. However, none of these specifically described embodiments has a plurality of abrasive structures configured in a stacked arrangement such that the abrasive layers and the absorbent layers alternate, such as required by independent claim 1.

In order to overcome the deficiencies in EP '974, the Office Action cites to WO '610. WO '610 teaches layers made from absorbent material separated by a plastic

sheet. Pg. 3, lines 19-31. The plastic layers taught in WO '610 are impermeable and function to keep the subsequent layer clean and sterile. See e.g., Pg. 4, lines 22-23. To combine the four embodiments of EP '974 with WO '610 would require each layer to be separated from the subsequent layer by a plastic sheet. When the exposed layer is removed along with the plastic sheet it would reveal a fresh layer of the same absorbent material as the removed layer. This combined design automatically precludes the first and third embodiments of EP '974 since they are not comprised of multiple layers of the cleaning or scrubbing substrate.

Furthermore, the second and fourth embodiments of EP '974 in combination with WO '610 do not teach all the limitations of claim 1. Specifically, the combination of EP '974 with WO '610 does not teach alternating abrasive and absorbent.

A combination of the teachings of WO '610 with the second embodiment described in EP '974 (having two or more cleaning substrates layered back to back and then attached to one scrubbing substrate) would require inserting a plastic sheet between each of the absorbent layers (the cleaning substrate), while leaving the lone scrubbing substrate attached to the outer cleaning substrate. Thus, while the plastic sheet (which is not useful as an abrasive layer) of WO '610 alternates with the absorbent cleaning substrate of EP '974, this combination would not lead to a substrate having alternating abrasive and absorbent layers, such as required by independent claim 1. Additionally, this combination does not lead to a plurality of scrubbing layers on the product, as required by independent claim 1.

Likewise, a combination of the fourth embodiment of EP '974 (one cleaning substrate attached to two or more scrubbing substrates that are layered on top of one another) with WO '610 would not lead to the structure of independent claim 1. A combination of the teachings of WO '610 with this embodiment of EP '974 would result in the insertion of a plastic sheet between each of the scrubbing layers, while leaving the lone cleaning substrate (absorbent layer) attached to one side of the substrate. Thus, while the plastic sheet (which is not useful as an absorbent layer) of WO '610 alternates with the scrubbing substrate of EP '974, this combination would not lead to a substrate having alternating abrasive and absorbent layers, such as required by independent claim 1. Additionally, this combination does not lead to a plurality of absorbent layers on the product, as required by independent claim 1.

Appellants respectfully assert, therefore, that combining EP '974 with WO '610 does not teach alternating layers comprising an abrasive and absorbent layer as defined in independent claim 1.

B. Independent claim 29 and its respective dependent claims are patentable over EP '974 in combination with WO '610.

Appellants respectfully submit that the teachings of EP '974 in view of WO '610 do not teach all the limitations of independent claim 29. Each of the four embodiments of EP '974, along with those of WO '610, expressly discloses stacked layers. Conversely, the limitations of independent claim 29 include a scrubbing product comprising a plurality of scrubbing layers each comprising an abrasive layer adhered to a fibrous cellulosic web that are wrapped around a substrate. The embodiment allows for the abrasive structures to be removed easily, much like peeling the layers of an

onion. See e.g., Fig. 22 and Pg. 19, Para. 0220. Nowhere do either of the cited references teach or even suggest such a configuration.

Furthermore, this configuration is directly opposite those taught by EP '974 in view of WO '610. As explained above, both of these references teach specifically arranged layers – to create a stacked product. Thus, from these express teachings, one of ordinary skill in the art would be lead away from wrapping the layers around a substrate. Applicants note that the Federal Circuit has several times expressly addressed the issue of how to evaluate an alleged case of prima facie obviousness to determine whether it has been properly made. For instance, “a prima facie case of obviousness can be rebutted if the applicant can show that the art in any material respect taught away from the claimed invention.” *In re Haruna*, 249 F.3d 1327,1335 (Fed. Cir. 2001), citing *In re Geisler*, 116 F.3d 1465, 1469 (Fed. Cir. 1997).

A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994). Furthermore, a “prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” M.P.E.P. 8th Ed., Rev. 2, §2141.02, citing *W.L. Gore & Associates v Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983).

C. Independent claim 47 and its respective dependent claims are patentable over EP '974 in combination with WO '610.

Appellants also respectfully submit that all the limitations of claim 47 are not taught by EP '974 in view of WO '610. As explained above with reference to independent claim 1, the four embodiments of EP '974 in combination with the teachings of WO '610 do not teach a plurality of abrasive structures comprising an alternating abrasive layer and absorbent layer configured in a stacked arrangement as disclosed in independent claim 47. Furthermore, nowhere in either of the cited references does it teach or suggest alternating abrasive and absorbent layers releasably attached by a plurality of stitches held together by thread as it does in independent claim 47. The releasably attached layers allow the top layer to be removed to exposes an underlying, fresh layer. Appellants respectfully submit that EP '974 in view of WO '610 does not teach all the limitations defined in independent claim 47.

D. One of ordinary skill in the art would not have combined the teachings of EP '974 with that of WO '610 as attempted by the Office Action.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. See *In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a prima facie case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Furthermore, “there must be some articulated reasoning with some rational

underpinning to support the legal conclusion of obviousness'... [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 82 USPQ2d 1385, 1396 (2007) (quoting In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)). Accordingly, even if all elements of a claim are disclosed in various prior art references, the claimed invention taken as a whole cannot be said to be obvious without some reason given in the prior art why one of ordinary skill would have been prompted to modify the teachings of the references to arrive at the claimed invention. See e.g., In re Regel, 188 U.S.P.Q. 132 (C.C.P.A. 1975).

The Supreme Court has stated that by demonstrating each element of a patent was independently known in prior art does not prove the invention to be obvious. KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 82 U.S.P.Q.2d (BNA) 1385 (S. Ct. 2007). The reasoning behind this is that many, if not all, inventions in some manner are combinations of what is already known; the elements being building blocks to reach the claimed inventions. KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 82 U.S.P.Q.2d (BNA) 1385 (S. Ct. 2007).

EP '974 teaches a disposable dishwashing wipe which comprises a cleaning and a scrubbing substrate. Pg. 3, Para 0010, line 10. The dishwashing wipe may comprise two or more cleaning or scrubbing substrates. Pg. 6, Para 0025, lines 1-2. These multiple layers of the substrate are either layered back to back or arranged side by side, so, for example, a wipe comprising multiple scrubbing layers would have scrubbing

substrates arranged one on top of the other with the scrubbing substrates reversibly attached to the cleaning substrate. Pg. 6, Para 0025, lines 4-10.

As explained in greater detail above, the teachings of EP '974 fail to teach all the limitations of independent claims 1, 29, and 47. For example, EP '974 fails to teach or suggest a plurality of abrasive structures comprising an alternating abrasive layer and an absorbent layer that are configured in a stacked arrangement, such as required by independent claims 1, 29, and 47. Additionally, EP '974 fails to teach that the plurality of abrasive structures – no matter their arrangement – are configured to be releasably attached together permitting the top abrasive structure to be removed from the scrubbing product, such as required by all independent claims.

The Office Action attempts to overcome the deficiencies of EP '974 by combining it with the teachings of WO '610. However, Appellants respectfully submit that it would not be obvious to arrange the cleaning and scrubbing substrate layers of EP '974 in an alternating fashion motivated by the teachings of WO '610.

WO '610 is directed to a disposable wash cloth comprising a first absorbing layer, a second disinfectant layer, and a third layer. The first layer is exposed for immediate use, with the second layer is enclosed between two attached plastic sheets. The third layer may also be enclosed between two plastic sheets. After the exposed first layer is used, the plastic sheet onto which the first layer is attached is torn off from the second plastic sheet and discarded. Thus, the second layer can be subsequently used for cleaning. See, e.g., Abstract and Fig. 1.

Applicants respectfully submit that no reason exists to modify the wipes of EP '974 in the manner attempted by the Office Action. The entire disclosure of EP '974 is directed to combating the problem of reusing dish washing brushes, cloths, or sponges when washing dishes. Pg. 2, paragraphs 2 and 3. In order to solve this problem, EP '974 discloses a disposable dishwashing wipe, intended for a limited number of uses. After use the consumer is instructed to discard the wipe. Thus, the user is no longer concerned with the presence of residues of antibacterial agents on dishware. Pg. 2, paragraph 3.

In order to modify the disposable wipes of EP '974 as attempted by the Office Action, one of ordinary skill in the art would have to add alternating layers to the wipe, so that a user can peel away the top layer to expose a fresher, underlying layer. Such a configuration would have to be motivated by the desire to extend the useful life of the wipe. However, this motivation is directly at odds with the disclosure of EP '974, which attempts to avoid the reuse of the wipe. Thus, no reason exists for one of ordinary skill in the art to somehow modify the disposable dishwashing wipes of EP '974 to extend their useful life, as attempted by the Office Action.

In fact, as shown above, EP '974 expressly teaches away from such a modification. The Federal Circuit has several times expressly addressed the issue of how to evaluate an alleged case of *prima facie* obviousness to determine whether it has been properly made. For instance, "a *prima facie* case of obviousness can be rebutted if the applicant can show that the art in any material respect taught away from the

claimed invention.” In re Haruna, 249 F.3d 1327,1335 (Fed. Cir. 2001), citing In re Geisler, 116 F.3d 1465, 1469 (Fed. Cir. 1997).

A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. In re Gurley, 27 F.3d 551, 553 (Fed. Cir. 1994). Furthermore, a “prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” M.P.E.P. 8th Ed., Rev. 2, §2141.02, citing W.L. Gore & Associates v Garlock, Inc., 721 F.2d 1540 (Fed. Cir. 1983).

The entire purpose of the invention disclosed in EP '974 was to provide a solution to reusing a dishwashing device that after its initial use would become a substrate for bacteria due to residual food and soil. Pg. 2, Para. 002. EP '974 solved this problem by providing a dishwashing wipe that is disposable and for a limited number of uses making it more hygienic. Pg. 2, Para. 0003. Conversely, the scrubbing product of the present application is designed so that each layer has a limited number of uses and once used the layer can be removed providing a longer lifetime for the scrubbing product. Appellants respectfully submit that one of ordinary skill in the art would not be motivated to somehow modify the disposable dishwashing wipes of EP '974 to extend their useful life, as attempted by the Office Action, since EP '974 is concerned with reusing dishwashing devices contaminated with bacteria, Appellants respectfully submit EP '974 expressly teaches away from such modification.

Appellants note that EP '974 in combination with WO '610 would still teach away from the limitations of independent claims 1, 29, and 47. WO '610 is also directed to a one time use disposable wash cloth where each of its layers is directed to a different use in a single cleaning process. See, e.g., Pg. 2, lines 8-13. When EP '974 is combined with WO '610 the result would be a one time use product where each of the layers was directed to a different washing function. The embodiments of the present application are directed to removable abrasive structures, each providing a scrubbing and absorbing function. Therefore, Appellants respectfully submit that even if EP '974 is combined with WO '610, it would not have been obvious to arrive at the presently pending independent claims.

Plainly, the Examiner's only incentive or motivation for so modifying either of the cited references in the manner attempted in the Final Office Action results from using Appellant's disclosure as a blueprint to reconstruct the claimed invention out of isolated teachings in the prior art, which is improper under 35 U.S.C. § 103. The U.S. Supreme Court recently reaffirmed that "[a] factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of argument reliant upon ex post reasoning." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d at 1397. See also, *Graham v. John Deere Co.*, 383 U.S. at 36, 148 USPQ at 474.

II. Dependent claims 5, 30, 31, and 49 are patentable over EP '974 in view of WO '610 and in further view of Prodoehl, et al.

In addition to the reasons set forth above related to their respective independent claims, dependent claims 5, 30, 31, and 49 are patentable over the cited references for the following reasons.

A. None of the cited references teach or even suggest an elastic thread as required by dependent claims 5 and 49.

In addition to the reasons indicated above regarding the independent claims, Appellants respectfully submit that dependent claims 5 and 49 patentably define over the references cited. Nowhere in any of the cited references are a plurality of stitches taught or suggested using an elastic thread to hold together the abrasive structures. The present application notes the usefulness of stitches comprising an elastic thread since when one or more abrasive structures are removed the elastic thread will still hold tightly the remaining abrasive structures. See e.g., Pg. 17, Para. 0196.

The Office Action rejects claims 5 and 49 under 35 U.S.C. § 103(a) in view of EP '974 and WO '610 in further view of U.S. Patent Application Publication No. 2003/0029895 to Prodoehl et al., while admitting none of the cited references teach the use of elastic thread. Appellants respectfully note that in order to establish *prima facie* obviousness, all of the claimed limitations must be taught or suggested in the prior art. See e.g., MPEP § 2143.03.

The Office Action states “it would have been obvious to one of ordinary skill in the art to have selected the particular type of thread used through the process of routine experimentation which produced the most durable and securely bonded material.” However, this reasoning is at odds with the presently claimed structure. For instance, claim 5 requires that the attachment structure releasably attaches the plurality of abrasive structures together. Thus, using the experimentation set forth in the Office Action to select the “most durable and securely bonded material” would not lead to releasably attached structures, as claimed by claim 5. Again, Applicants point out that

all of the limitations in the claim must be present in the cited references in order to sustain a proper rejection under 35 U.S.C. § 103(a).

B. The limitations of dependent claims 30 and 31 are not taught or suggested by EP '974 in view of WO '610, even if combined.

Appellants also submit that dependent claims 30 and 31 are patentable over the cited references in any combination. Neither of the above cited references discloses a scrubbing product in a rectangular or cylindrical shape as disclosed in claims 30 and 31, respectively. The shape of the scrubbing product of the present application allows for the scrubbing product to be specialized for a particular use or allows it to have a multi-application use. See e.g., Pg. 16, Para 0185.

In conclusion, Appellants requests favorable action and allowance of the presently pending claims.

Respectfully requested,

DORITY & MANNING, P.A.



Alan R. Marshall
Registration No. 56,405
P.O. Box 1449
Greenville, SC 29602-1449
Phone: (864) 271-1592
Facsimile: (864) 233-7342

Date: _____

8/23/07

8. CLAIMS APPENDIX

1. (Rejected) A scrubbing product comprising:
a plurality of abrasive structures comprising an abrasive layer and an absorbent layer, the abrasive structures being configured in a stacked arrangement such that the abrasive layers and the absorbent layers alternate;
a liquid absorbent substrate having a top surface and a bottom surface, the plurality of abrasive structures being attached to the top surface; and
an attachment structure for releasably attaching the plurality of abrasive structures together, the attachment structure permitting a top abrasive structure to be removed from the scrubbing product by a user pulling on the top abrasive structure.
2. (Rejected) A scrubbing product as defined in claim 1, wherein the attachment structure holds the plurality of abrasive structures together with sufficient strength to permit use of the scrubbing product without the plurality of abrasive structures delaminating.
3. (Rejected) A scrubbing product as defined in claim 1, wherein the liquid absorbent substrate comprises a sponge, a foam, a nonwoven material, or a tissue laminate.
4. (Rejected) A scrubbing product as defined in claim 1, wherein the attachment structure comprises a plurality of stitches, the abrasive structures being held together by a thread.
5. (Rejected) A scrubbing product as defined in claim 4, wherein the thread is made from an elastic material.
6. (Rejected) A scrubbing product as defined in claim 4, wherein the stitches are located around a perimeter of the plurality of abrasive structures, each of the abrasive structures being perforated where the stitches are located to permit release of one abrasive structure from the remaining plurality.
7. (Rejected) A scrubbing product as defined in claim 4, wherein the stitches extend through the entire scrubbing product.
8. (Rejected) A scrubbing product as defined in claim 4, wherein the stitches only extend through the plurality of abrasive structures.

9. (Withdrawn) A scrubbing product as defined in claim 1, wherein the attachment structure comprises hook and loop attachments between the plurality of abrasive structures.

10. (Withdrawn) A scrubbing product as defined in claim 9, wherein the abrasive structures comprise an abrasive layer attached to a fibrous cellulosic web, the abrasive layer comprising hooks, the cellulosic web defining a surface attachable to the hooks of an adjacent abrasive structure.

11. (Withdrawn) A scrubbing product as defined in claim 9, wherein the abrasive structures comprise a fibrous cellulosic web attached to an abrasive layer on one side and to a loop material on an opposite side.

12. (Rejected) A scrubbing product as defined in claim 1, wherein the abrasive structures wrap around at least two sides of the liquid absorbent substrate.

13. (Withdrawn) A scrubbing product as defined in claim 12, wherein each abrasive structure forms an endless loop, the endless loop defining a perforation line that traverses across the width of the abrasive structure for permitting removal of the abrasive structure from the scrubbing product.

14. (Withdrawn) A scrubbing product as defined in claim 1, wherein the attachment structure comprises point bonded attachment points between adjacent layers of the abrasive structures.

15. (Withdrawn) A scrubbing product as defined in claim 14, wherein the point bonded attachment points are formed by an adhesive.

16. (Withdrawn) A scrubbing product as defined in claim 14, wherein the point bonded attachment points comprise areas where the plurality of abrasive structures are melt bonded together.

17. (Rejected) A scrubbing product as defined in claim 1, wherein the attachment structure comprises a plurality of apertures extending through the abrasive structures.

18. (Rejected) A scrubbing product as defined in claim 1, wherein each abrasive structure comprises an abrasive layer comprising abrasive polymeric fibers in

a non-uniform distribution secured to an absorbent layer comprising a fibrous cellulosic web.

19. (Withdrawn) A scrubbing product as defined in claim 18, wherein the cellulosic web comprises an uncreped, through dried paper web.

20. (Withdrawn) A scrubbing product as defined in claim 18, wherein the absorbent layer comprises an airlaid web, a coform web, or a paper web.

21. (Rejected) A scrubbing product as defined in claim 18, wherein the abrasive layer comprises a meltspun web.

22. (Rejected) A scrubbing product as defined in claim 21, wherein the meltspun web comprises a meltblown web.

23. (Rejected) A scrubbing product as defined in claim 18, wherein the abrasive polymeric fibers have a mean diameter greater than about 40 microns.

24. (Rejected) A scrubbing product as defined in claim 18, wherein the abrasive layer has a basis weight of greater than about 50 gsm.

25. (Rejected) A scrubbing product as defined in claim 19, wherein the cellulosic web contains high yield fibers in an amount of at least about 5% by weight.

26. (Rejected) A scrubbing product as defined in claim 18, wherein the abrasive structures further contain an additive comprising a soap, a detergent, a buffering agent, an antimicrobial agent, a skin wellness agent, a lotion, a medication, a polishing agent, or mixtures thereof.

27. (Rejected) A scrubbing product as defined in claim 1, wherein the liquid absorbent substrate comprises multiple layers of a paper web.

28. (Rejected) A scrubbing product as defined in claim 27, wherein the paper web comprises an uncreped, through air dried web.

29. (Rejected) A scrubbing product comprising:
a substrate; and
a plurality of scrubbing layers wrapped around the substrate, each of the scrubbing layers comprising an abrasive structure including an abrasive layer adhered to a fibrous cellulosic web, wherein the scrubbing layers are configured to be

sequentially removed from the scrubbing product thereby exposing an unused scrubbing layer lying below the removed layer.

30. (Rejected) A scrubbing product as defined in claim 29, wherein the scrubbing product has a rectangular shape.

31. (Rejected) A scrubbing product as defined in claim 29, wherein the scrubbing product has a cylindrical shape.

32. (Withdrawn) A scrubbing product as defined in claim 29, wherein each scrubbing layer forms an endless loop around the substrate, each layer including a perforation line.

33. (Withdrawn) A scrubbing product as defined in claim 29, wherein the plurality of scrubbing layers are spirally wound around the substrate.

34. (Withdrawn) A scrubbing product as defined in claim 33, wherein the scrubbing layers are periodically perforated thereby defining individual abrasive structures.

35. (Rejected) A scrubbing product as defined in claim 29, further comprising an attachment structure for releasably attaching the plurality of scrubbing layers together.

36. (Rejected) A scrubbing product as defined in claim 35, wherein the attachment structure comprises a plurality of stitches.

37. (Withdrawn) A scrubbing product as defined in claim 35, wherein the attachment structure comprises hook and loop attachments between the plurality of scrubbing layers.

38. (Withdrawn) A scrubbing product as defined in claim 35, wherein the attachment structure comprises point bonded attachment points between adjacent layers of the abrasive structures.

39. (Withdrawn) A scrubbing product as defined in claim 38, wherein the point bonded attachment points are formed by an adhesive.

40. (Withdrawn) A scrubbing product as defined in claim 38, wherein the point bonded attachment points comprise areas where the plurality of abrasive structures are melt bonded together.

41. (Rejected) A scrubbing product as defined in claim 29, wherein the substrate comprises a plurality of paper layers.

42. (Rejected) A scrubbing product as defined in claim 41, wherein the paper layers comprise uncreped, through air dried sheets.

43. (Rejected) A scrubbing product as defined in claim 29, wherein the abrasive layer comprises a meltspun web.

44. (Rejected) A scrubbing product as defined in claim 43, wherein the meltspun web comprises a meltblown web.

45. (Rejected) A scrubbing product as defined in claim 29, wherein the abrasive polymeric fibers have a mean diameter greater than about 40 microns.

46. (Rejected) A scrubbing product as defined in claim 29, wherein the abrasive layer has a basis weight of greater than about 50 gsm.

47. (Rejected) A scrubbing product comprising:
a plurality of abrasive structures comprising an abrasive layer and an absorbent layer, the abrasive structures being configured in a stacked arrangement;
an attachment structure for releasably attaching the plurality of abrasive structures together, the attachment structure permitting a top abrasive structure to be removed from the scrubbing product by a user, the attachment structure comprising a plurality of stitches such that the plurality of abrasive structures are held together by a thread.

48. (Rejected) A scrubbing product as defined in claim 47, wherein the attachment structure holds the plurality of abrasive structures together with sufficient strength to permit use of the scrubbing product without the plurality of abrasive structures delaminating.

49. (Rejected) A scrubbing product as defined in claim 47, wherein the thread is made from an elastic material.

50. (Rejected) A scrubbing product as defined in claim 47, wherein the stitches are located around a perimeter of the plurality of abrasive structures, each of the abrasive structures being perforated where the stitches are located to permit release of one abrasive structure from the remaining plurality.

51. (Rejected) A scrubbing product as defined in claim 47, further comprising a liquid absorbent substrate defining a top, the plurality of abrasive structures being secured to the top of the liquid absorbent substrate.

52. (Rejected) A scrubbing product as defined in claim 51, wherein the liquid absorbent substrate comprises a plurality of paper plies attached together.

53. (Rejected) A scrubbing product as defined in claim 47, wherein each abrasive structure comprises an abrasive layer comprising abrasive polymeric fibers in a nonuniform distribution secured to an absorbent layer comprising a fibrous cellulosic web.

54. (Withdrawn) A scrubbing product as defined in claim 53, wherein the cellulosic web comprises an uncreped, through dried paper web.

55. (Withdrawn) A scrubbing product as defined in claim 53, wherein the absorbent layer comprises an airlaid web, a coform web, or a paper web.

56. (Rejected) A scrubbing product as defined in claim 53, wherein the abrasive layer comprises a meltspun web.

57. (Rejected) A scrubbing product as defined in claim 56, wherein the meltspun web comprises a meltblown web.

58. (Rejected) A scrubbing product as defined in claim 53, wherein the abrasive polymeric fibers have a mean diameter greater than about 40 microns.

59. (Rejected) A scrubbing product as defined in claim 53, wherein the abrasive layer has a basis weight of greater than about 50 gsm.

60. (Rejected) A scrubbing product as defined in claim 53, wherein the absorbent layer comprises a plurality of plies.

61. (Withdrawn) A scrubbing product as defined in claim 60, wherein each ply comprises a paper web.

62. (Rejected) A scrubbing product as defined in claim 47, further comprising a liquid absorbent substrate, the plurality of abrasive structures being attached to the liquid absorbent substrate.

63. (Rejected) A scrubbing product as defined in claim 62, wherein the liquid absorbent substrate comprises a plurality of paper webs.

64. (Withdrawn) A scrubbing product comprising:
a plurality of abrasive structures, the abrasive structures being configured
in a stacked arrangement;

an attachment structure for releasably attaching the plurality of abrasive
structures together, the attachment structure permitting a top abrasive structure to be
removed from the scrubbing product by a user, the attachment structure comprising a
plurality of point bonded attachment points located between adjacent layers of the
abrasive structures.

65. (Withdrawn) A scrubbing product as defined in claim 64, wherein the point
bonded attachment points are formed by an adhesive.

66. (Withdrawn) A scrubbing product as defined in claim 64, wherein the point
bonded attachment points comprise areas where the plurality of abrasive structures are
melt bonded together.

67. (Withdrawn) A scrubbing product as defined in claim 64, wherein each
abrasive structure comprises an abrasive layer comprising abrasive polymeric fibers in
a non-uniform distribution secured to an absorbent layer comprising a fibrous cellulosic
web.

68. (Withdrawn) A scrubbing product as defined in claim 67, wherein the
cellulosic web comprises an uncreped, through dried paper web.

69. (Withdrawn) A scrubbing product as defined in claim 67, wherein the
absorbent layer comprises an airlaid web, a coform web, or a paper web.

70. (Withdrawn) A scrubbing product as defined in claim 67, wherein the
abrasive layer comprises a meltspun web.

71. (Withdrawn) A scrubbing product as defined in claim 70, wherein the
meltspun web comprises a meltblown web.

72. (Withdrawn) A scrubbing product as defined in claim 67, wherein the
abrasive polymeric fibers have a mean diameter greater than about 40 microns.

73. (Withdrawn) A scrubbing product as defined in claim 67, wherein the
abrasive layer has a basis weight of greater than about 50 gsm.

74. (Withdrawn) A scrubbing product as defined in claim 67, wherein the absorbent layer comprises a plurality of plies.

75. (Withdrawn) A scrubbing product as defined in claim 74, wherein each ply comprises a paper web.

76. (Withdrawn) A scrubbing product as defined in claim 64, further comprising a liquid absorbent substrate, the plurality of abrasive structures being attached to the liquid absorbent substrate.

77. (Withdrawn) A scrubbing product as defined in claim 76, wherein the liquid absorbent substrate comprises a plurality of paper webs.

78. (Withdrawn) A scrubbing product comprising:
a plurality of abrasive structures, the abrasive structures being configured in a stacked arrangement;

an attachment structure for releasably attaching the plurality of abrasive structures together, wherein the abrasive structure holds the plurality of abrasive structures together with sufficient strength to permit use of the scrubbing product without the plurality of abrasive structures delaminating, the attachment structure, however, permitting a top abrasive structure to be removed from the scrubbing product by a user, the attachment structure comprising hook and loop attachments located between the plurality of abrasive structures.

79. (Withdrawn) A scrubbing product as defined in claim 78, wherein the abrasive structures comprise an abrasive layer attached to a fibrous cellulosic web, the abrasive layer comprising hooks, the cellulosic web defining a surface attachable to the hooks of an adjacent abrasive structure.

80. (Withdrawn) A scrubbing product as defined in claim 78, wherein the abrasive structures comprise a fibrous cellulosic web attached to an abrasive layer on one side and to a loop material on an opposite side.

81. (Withdrawn) A scrubbing product as defined in claim 78, wherein each abrasive structure comprises an abrasive layer comprising abrasive polymeric fibers in a non-uniform distribution secured to an absorbent layer comprising a fibrous cellulosic web.

82. (Withdrawn) A scrubbing product as defined in claim 81, wherein the cellulosic web comprises an uncreped, through dried paper web.

83. (Withdrawn) A scrubbing product as defined in claim 81, wherein the absorbent layer comprises an airlaid web, a coform web, or a paper web.

84. (Withdrawn) A scrubbing product as defined in claim 81, wherein the abrasive layer comprises a meltspun web.

85. (Withdrawn) A scrubbing product as defined in claim 84, wherein the meltspun web comprises a meltblown web.

86. (Withdrawn) A scrubbing product as defined in claim 81, wherein the abrasive polymeric fibers have a mean diameter greater than about 40 microns.

87. (Withdrawn) A scrubbing product as defined in claim 81, wherein the abrasive layer has a basis weight of greater than about 50 gsm.

88. (Withdrawn) A scrubbing product as defined in claim 81, wherein the absorbent layer comprises a plurality of plies.

89. (Withdrawn) A scrubbing product as defined in claim 88, wherein each ply comprises a paper web.

90. (Withdrawn) A scrubbing product as defined in claim 78, further comprising a liquid absorbent substrate, the plurality of abrasive structures being attached to the liquid absorbent substrate.

91. (Withdrawn) A scrubbing product as defined in claim 90, wherein the liquid absorbent substrate comprises a plurality of paper webs.

9. EVIDENCE APPENDIX

None

10. RELATED PROCEEDINGS APPENDIX

None